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rejected under 35 U.S.C. §103(a) as being obvious over RFP. After a careful review of the claims (as amended), it has been concluded that the rejections are in error and the rejections are, therefore, traversed.

2. The drawings have been objected to under 37 CFR §1.83(a). New FIGs. 35-37 were provided along with the Response filed on January 22, 2003 to obviate the objections under 37 CFR §1.83(a).

3. Claims 2-20, 22-38 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 2-20 and 22-38 were amended to clarify the scope of the claimed invention in the Response filed on January 22, 2003.

4. Claims 1, 3-5, 9, 11, 12, 19-21, 23-25, 31, 33, 34 and 36 have been rejected as being anticipated by "RFP Marketing Opportunities Abound At 'Design Your Dream House' Site" (RFP). In particular, the Examiner asserts that

"RFP shows building a third party web site for customer selection of building options: receiving from the customer through the site a selection of an option provided by a contractor; and collecting a commission from the builder . . . As to claims 21, 23-35, 29 and 31, RFP inherently shows means for performing all steps since performing the steps is shown, as described above . . . As to claim 34, RFP shows a web site provided by a third party for selecting options. It inherently shows selection and commission processors since such functional subsystems must exist to allow customers to select and to collect the commission as disclosed in the reference".

It is noted in this regard that the Examiner appears to be mistaken on a number of different levels. More

specifically, RFP does not teach or suggest the claimed invention, as asserted by the Examiner; but, instead merely describes a desired objective. More specifically, RFP explicitly states that "Our idea is to create a 'Design Your Dream House' Web site that allows consumers to start with one of several basic designs, change options with the design constraints specified by the program, and match the house to the topography of available lots" (RFP, lines 18-21). It may be noted in this regard that the claimed invention is drawn to "product options of product offerings available from or through the contractors", not to differences in topography or architecture. The creation of a custom home design using a web site under RFP is clearly different than the claimed invention.

RFP also explicitly states that "Our existing software produces a fairly realistic architectural design rendering that's sufficient for soliciting initial bids" (RFP, lines 21-23). However, RFP goes on to admit that their existing design rendering software is not adapted to web sites and that they "need help adapting a Win32 user interface to the Web architecture" (RFP, line 28).

Since the RFP document explicitly states that the writer needs help in adapting the Win32 interface to the Web architecture, it is clear that no website exists. Since no website exists and the writer of the RFP document clearly admits that he doesn't know how to build the website, the RFP document must be regarded as non-enabling with regard to the proposed website.

Further, the statement that "When this process results in a real homebuilding contract, we will collect a commission" (RFP, lines 23-24) does not support the Examiner's contentions. For example, how does the RFP

process result in a contract? Does RFP send the rendered drawings to contractors through the U.S. Post Office or does RFP simply provide rendered drawings to the consumer, who, in turn, sends them to the contractor? Without more, it is highly presumptuous for the Examiner to assume that more occurs than what is explicitly stated.

Further, the statement that "The extranet can collect queries and data from the Internet and provide a confidential forum where contractors can bid on projects" (RFP, page 3, lines 10-12) is also not supportive of the Examiner's position. For example, independent claims 1, 21 and 34 are limited to a "customer of the contractor". By definition, the term customer presumes a pre-existing condition between the customer and contractor. The act of bidding on a project does not automatically make the RFP consumer a customer.

In addition, it is the extranet that provides the "confidential forum where contractors can bid on projects". The use of the term "forum" suggests the use of a simultaneous, multi-user interface such as a chat room. The fact that the RFP contractors use an extranet forum for bidding further suggests there is no direct relationship between the RFP contractors and any RFP architectural design web site (which the RFP writer clearly admits that he doesn't know how to build).

Since the RFP web site is limited to rendering architectural drawings and the RFP contractors use an extranet forum for bidding, RFP does not do exactly the same thing in exactly the same way as the claimed invention. More specifically, RFP fails to provide, inter alia, any teaching of the method steps of (or apparatus for) "providing a first website by the third-party website


provider for use by the customer in selecting product options of product offerings available from or through the contractor" or "receiving from the customer through the first website a selection of an option of the options provide by the contractor". Since RFP does not do exactly the same thing in exactly the same way, the rejection is believed to be improper and should be withdrawn.

5. Claims 7, 8, 14, 15, 27, 28, 38-42 have been rejected as being obvious over RFP. However, as demonstrated above, RFP fails to teach or suggest each and every claim limitation as required by MPEP 2143.02. Since RFP fails to teach each and every claim limitation, the rejections are believed to be improper and should be withdrawn.

6. In the Response filed on January 22, 2003, the Inventor, Bruce A. Fogelson, provided an affidavit removing RFP as a reference under 35 U.S.C. 102. In the advisory action of February 25, 2003, the Examiner asserts that "The affidavits and viewgraphs do not sufficiently substantiate the date of the invention". However substantiation of the date of the invention is not the standard for removal of a reference. More specifically, the standard for removal is "conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to . . . the filing of the application" (37 CFR §1.131(b)). Since the inventor, Bruce A. Fogelson, has established conception of the invention prior to the effective date of RFP coupled with due diligence from prior to RFP to the filing date of the application, the rejection under RFP is improper and should be withdrawn.

7. Allowance of claims 1-43, as now presented, is believed to be in order and such action is earnestly solicited. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to telephone applicant's undersigned attorney.

Respectfully submitted,  
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